

**IN THE UNITED STATES DISTRICT COURT**  
**FOR THE DISTRICT OF NEW MEXICO**

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FOREST GUARDIANS, et al.,

Plaintiffs,

vs.

Civ. No. 06-231 WJ/KBM

UNITED STATES FISH AND WILDLIFE SERVICE,

Defendant,

and

THE PEREGRINE FUND,

Defendant-Intervenor.

**MEMORANDUM OPINION AND ORDER**  
**DENYING IN PART DEFENDANT AND**  
**DEFENDANT-INTERVENOR'S MOTIONS TO STRIKE**

THIS MATTER comes before the Court on Defendant and Defendant-Intervenor's Motions to Strike. (Doc. 47, 52). The Court, having considered the instant Motions and Defendant-Intervenor's accompanying Memorandum (Doc. 48), the Plaintiffs' Responses (Doc. 56, 57), the subsequent replies (Doc. 63, 66), the applicable law, and otherwise being fully informed, hereby denies in part Defendant and Defendant-Intervenor's Motions to Strike.

Plaintiffs filed an October 22, 2007 Petition for Review of Agency Action. (Doc. 46). Attached to Plaintiffs' Petition were four documents. (Doc. 46-2, 46-3, 46-4, 46-5). Defendant and Defendant-Intervenor, in the instant Motions, move the court to strike the entirety of Attachment 1 (Doc. 46-2) and Attachment 2 (Doc. 46-3) to the extent that it does not establish Plaintiffs standing in this case. The Court denies Defendant and Defendant-Intervenor's

Motions as to Attachment 2. However, the Court will review the document for the limited purpose of establishing standing. The Court will not consider any of its contents when deciding the merits of this case. Further, the Court will disregard Plaintiffs' arguments on the merits to the extent they rely on Attachment 2 (Doc. 46-3).

The Court withholds judgment on Attachment 1 (Doc. 46-2). If the Court allows this exhibit into evidence, it would presumably go to Plaintiffs' claim that Defendant's National Environmental Policy Act ("NEPA") analysis "is a fraud because the Agency pre-determined the results of its analysis in 2002 before the NEPA process began." (Doc. 46). The Court will hear argument on the admissibility of this exhibit at the May 20, 2008 hearing scheduled in this case.

**SO ORDERED**

A handwritten signature in black ink, appearing to read 'William P. Johnson', written over a horizontal line.

WILLIAM P. JOHNSON  
UNITED STATES DISTRICT JUDGE